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The Solicitors' Journal

[REGISTERED AS A NEWSPAPER.]

VOL. LXXV. No. 13 [PAGES 209 TO 222]. Saturday, March 28, 1931. PRICE 1s.

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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

Lord Glenavy.

BY THE death, a few days ago, at the age of seventy-nine, of LORD GLENAVY, there has passed away one who for many years played a notable rôle in Ireland, both in law and in politics. After an academic career of extraordinary brilliancy, Mr. JAMES CAMPBELL, as he was then, was called to the Irish Bar in 1878, and very speedily acquired a large junior practice; so successful, indeed, was he as a junior that in 1890 he took silk and thereupon became one of the busiest leaders. Politics then attracted him; he won a seat for his party in the St. Stephen's Green division of Dublin, a constituency which was largely Nationalist, which led to his appointment in 1901 as Solicitor-General for Ireland, an office which he exchanged in 1905 for that of Attorney-General. When, a little later, there came a decline in legal business in Dublin, he turned his eyes to London, where the present LORD CARSON had shown that very much larger professional rewards were to be secured than in the Irish capital. CAMPBELL, who had been called at Gray's Inn in 1899, and was made an English King's Counsel in 1906, settled here for a time, hoping to find work at the English Bar as profitable as his friend, Mr. CARSON, had found it; but the race is not always to the swift nor the battle to the strong, and in Mr. CAMPBELL'S case this truth was once again exemplified. Why he should not have achieved the like success as his fellow-countryman it is difficult to say, for he had many gifts—a sound knowledge of law and a forceful manner as an advocate; and we imagine that he was keenly disappointed at his comparative lack of success in London. However, this was only momentary, for before long his legal and political services to his country were rewarded by his appointment in 1916 as Lord Chief Justice of Ireland, and two years later as Lord Chancellor of Ireland, a post which he held till 1921. When the Senate was established under the Free State Government the chairmanship of that body was offered to and accepted by the ex-Lord Chancellor, who by this time had been raised to the peerage as LORD GLENAVY, and to the discharge of his new duties he brought a wide experience of public affairs, a cool temper and sound sense—qualities which eminently fitted him for the post and which in fact made him the dominating influence of the Senate until his resignation in 1928. Ireland was justly proud of her distinguished citizen and public servant.

Coroner and Solicitor.

THE UNFORTUNATE incident at the Wembley inquest when a solicitor was ejected from the coroner's court has been cleared up by the coroner's admission that he misunderstood the question to which he took objection and his expression of regret. It would, indeed, have been better had a little more forbearance been exercised on the first occasion. Reading the press reports of what occurred we were at a loss to understand why the question met with the coroner's disapproval, and a little shocked at the drastic steps taken to silence the questioner. It is well to remember what the legal position is. Any appearance by counsel or solicitor is a matter wholly within the discretion of the coroner. He can admit to his court whom he chooses, and exclude anyone at any time. He may, if he consider proper, conduct the whole inquiry in secret, see "Jervis on Coroners," 7th ed., p. 39, and cases there cited. But it is customary to hold inquests so far as possible in public, a course having obvious advantages. For one thing, the matter becoming known, may lead to the volunteering of valuable evidence. Wherever, too, the assistance of counsel is likely to be useful to the jury, they should be permitted to appear. The whole matter is one to be regulated by mutual goodwill and friendly accommodation; not by the forcible action of "at least three big policemen."

"With a Woman Unknown."

AS WE had ventured to prophesy last year (see 74 SOL. J. 824), the decision of MERRIVALE, P., in *Woolf* v. *Woolf*, in which he refused a wife petitioner her decree, was reversed in the Court of Appeal: see 47 T.L.R. 477. The case was one of the very familiar hotel-bill type, with the testimony of a chamber-maid that she saw the respondent in bed with his companion in the hotel. In accordance with the recent practice which has sprung up in the Divorce Court, the woman's name was required, but the information was steadfastly refused by the man. The President declined to pronounce the decree, but the Court of Appeal ruled that the Court must make the inference of adultery in such circumstances, notwithstanding that the respondent had proved himself so eager for divorce that he had spoken of "my decree," and notwithstanding also that the name of the woman was still unknown. Whether this decision will sweep away the whole recent practice of requiring the woman's name remains to be seen, but clearly the fact that it was withheld appeared irrelevant to the Lords Justices. The ruling also established that the evidence for adultery must henceforth be considered on its proper merits, irrespective of the fact that the respondent obviously wishes the decree to be made. It may be added that the decision of the Court of Appeal is inconsistent with several other cases recently decided in the Divorce Court, where no doubt the recent practice will be reconsidered in the light of it. The need for the drastic reform of the whole law of divorce is made sufficiently apparent by such cases.

The Sale of Irish Sweepstake Tickets.

THE DIVISIONAL COURT in *R.* v. *Registrar of Companies* on the 9th inst. did not take long to decide whether the sale in this country of Irish sweepstake tickets was legal. Mr. JOHN MORE had been granted a rule *nisi* calling on the Registrar of Companies to show cause why a writ of *mandamus*

should not issue commanding him to register, pursuant to the Companies Act, the memorandum and articles of association of a company called Irish Hospitals Sweeps Limited. The main object of the proposed company was to sell and deal in tickets in lotteries authorised by the Government of the Irish Free State. The Registrar had refused to register it on the ground that its main object was illegal. Section 41 of the Lotteries Act, 1823 (4 Geo. 4, c. 60), provides that "if any person . . . shall sell any ticket . . . in any lottery . . . authorised by any foreign potentate or state . . . except such as are or shall be authorised by this or some other Act of Parliament to be sold . . . such person . . . shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall also be deemed a rogue and vagabond . . . and shall be punished as such in the manner hereinafter directed." Section 67 provides that offenders, when adjudged rogues and vagabonds, may be committed to prison for from one to six months, and on a second conviction of a like offence may be privately whipped. In support of the rule it was ingeniously argued that the object of the Act was to prevent competition to English State-conducted lotteries from foreign lotteries and unauthorised private lotteries within the United Kingdom. The words "authorised by . . . some other Act of Parliament" meant "authorised by an Act of that Parliament which had jurisdiction in that area within His Majesty's Dominions in which the lottery was conducted." In any case, it was argued, the lottery was indirectly authorised by the Act of Parliament of the United Kingdom, which in 1922 gave effect to the Constitution of the Irish Free State, as that Constitution permitted the existing law, including the Act of 1823, to remain in force until amended by the Parliament of the Free State. The very short answer to this argument was stated by the Lord Chief Justice, in an admirably succinct judgment, to be that the words "by this or some other Act of Parliament" were not the same as "by Act of this or some other Parliament." Mr. Justice SWIFT and Mr. Justice HUMPHREYS both agreed, and the rule was discharged with costs. It is not generally known that the Act of 1823 is described in the statute book as "An Act for granting to his Majesty a Sum of Money to be raised by way of Lottery." But s. 19, which recites that "it may be expedient to discontinue raising money for the public by way of lottery after the sale of tickets authorised by this Act," makes it quite clear that the prohibitions in the Act are intended to be of general application. In any case the judgment of the Divisional Court is now an authoritative statement on the matter.

An Intestate's Murderer as Next-of-kin.

IN *Re Pitts: Cox* v. *Kilsby* (*The Times*, 26th February) FARWELL, J., considered whether one, who was respectively husband and father of two persons whom he had killed, could benefit under their intestacies. He had in fact shot his wife and son and himself immediately afterwards, and the claim was made by his mother as administratrix against the wife's mother, who would have taken both estates if her son-in-law was disqualified. A coroner's jury found that the man murdered his victims, and then committed suicide while of unsound mind. Verdicts of this kind are seldom in accordance with the facts, but there are obvious reasons why juries continue to give them. The judge, following *Bird* v. *Keep* [1918] 2 K.B. 692, decided that he was not bound by this verdict, and held further that the husband was insane when he killed his wife and son. It followed, therefore, that he had not murdered them, and also that the doctrine that a murderer must not benefit from his crime, illustrated by such cases as *Re Crippen* [1911] P. 108, did not apply. This and other cases in the books, such as *Re Hall* [1914] P. 1, apply to benefits under wills, but FARWELL, J., expressed an opinion that the same principle would equally do so on intestacy. His attention, however, does not appear to have been called to the case of *Re Houghton* [1915] 2 Ch. 173, in which, in very similar circumstances, JOYCE, J., after observing that the point had never been decided in this country, delivered a somewhat vigorous dictum to the contrary. He quoted the judgment in the American case of *Re Carpenter's Estate* (1895), 50 Am. St. Rep. 765, and based his own opinion on the reasoning therein, namely, that a judge could not disregard the positive directions contained in the Statute of Distributions. Since 1915 that statute has been repealed, and distribution on intestacy is regulated by the Administration of Estates Act, 1925—which, however, equally ignores the possibility of a beneficiary under its provisions murdering the intestate. Possibly, therefore, while the dictum of JOYCE, J., may be preferred to that of FARWELL, J., on the actual state of the law, that of FARWELL, J., indicates what it more reasonably ought to be. As we suggested on p. 128, *ante*, our legislators might usefully consider the provisions in the German code as to "unworthy heirs." On such a list, the murderer of the intestate should surely take the first place.

The Public-House "Tie."

A NEWSPAPER reports that a number of publicans at Margate are extremely dissatisfied with the working of the "tie" covenants with their brewery landlords. It is also stated that one of the biggest local breweries has forbidden its tenants to stock a very popular brand of bottled beer and one of tonic water in general demand. The nature of the brewery "tie" is no doubt well known. It binds the licensed victualler, as tenant of the brewery owning the house, not only to buy the landlord's beer, but, so far as he may be allowed to buy and sell other beers and spirits, to buy them from the brewer landlords, at, of course, higher prices than those of the open market. In one case at Margate, the obligation to buy through the brewers is stated to extend even to chipped potatoes, and a publican examined before a Licensing Laws Commission previous to that recently sitting was reported to testify that he was "tied for every —— thing except sawdust." The publicans concerned intend to hold a meeting of protest, the report of the proceedings at which, no doubt, will be of interest. The "tie" appears to have been invented round about the beginning of the last century, and had a very narrow escape from being declared void as contrary to public policy. Thus, Lord ELLENBOROUGH, in *Cooper* v. *Twibill* (1808), 2 Camp. 286—"The whole of these leases, by which people of the description of the plaintiff are prevented from having the article they deal in from those who will serve them best, are extremely injurious to the public welfare"—on the finding that the beer supplied by the defendants was of bad quality, he held that the publican was absolved from his obligation under the "tie." A similar point arose in *Thornton* v. *Sherratt* (1818), 8 Taunt. 529, when DALLAS, J., said: "I very much disapprove of these covenants by which the brewer gets the publican into his power"—and he also held that the beer supplied under the covenant must be of marketable quality. Since, however, these judges failed to give practical effect to their disapproval by holding the covenants void, they continued, and now *Catt* v. *Tourle* (1869), L.R. 4 Ch. 654, has established them as of unquestioned validity. And so, in the words of a former note in these pages (72 SOL. J. 573), the "tie" has "dug itself into our system, and surrounded itself with a barbed wire entanglement of vested interests." Tied houses are no doubt as a rule well conducted, and the police are said to prefer them, but the publican in such a house is expected to sell beer and discourage the sale of tea and temperance drinks, which is not entirely satisfactory. Indeed, the customer who would enter an ordinary London public-house and demand a cup of tea would be a hardy person. There is a suggestion that the Margate justices might refuse to renew the licence of houses they deemed oppressively tied, but it is submitted they have no power to do so: see Licensing Consolidation Act, 1910, s. 18, and 2nd Sched., Pt. II.

Easter and Whitsuntide Offerings.

THE House of Lords decided in *Blakiston* v. *Cooper* [1909] A.C. 104; 5 Tax Cases 347, that the collections taken in his church on Easter Day and handed to the incumbent were chargeable to tax under Sched. E, r. 1, of the Income Tax Act, 1842. Upon the strength of that decision it has become the recognised practice for income tax to be assessed upon all incumbents who receive these Easter offerings, as they are termed. Whether they ought to be so assessed in every case is at least open to doubt; and in view of the decision given by Mr. Justice ROWLATT in *Slaney* (*Inspector of Taxes*) v. *Rev. E. S. Starkey* (*vide The Times* of the 7th inst.), that doubt would appear to be not less real than before, though assessment appears to have been accepted as inevitable by practically every incumbent in receipt of these Easter offerings. In the *Starkey Case* the learned judge held that a collection taken on Whit Sunday and presented to the respondent, an "assistant stipendiary curate," was likewise assessable to income tax. The decision in this case, and the presumption which seems to arise that a custom is coming into vogue of giving the Whit Sunday collection to the curate whose vicar has had the Easter Day collection, would seem to justify looking into the precedents cited by the Attorney-General for the Crown and by Mr. MARSHALL FREEMAN who argued the case for the respondent.

The head-note to *Blakiston* v. *Cooper*, *supra*, reads thus:—

"Voluntary Easter Offerings of money given as a freewill gift to the incumbent of a benefice *as such* for his personal use are, *if given for the purpose of increasing his stipend*, assessable to income tax as 'profits accruing to him by reason of his office . . .'"

[The italics are our own.]

It will be observed that two tests are there laid down upon which liability is to depend: (*a*) whether the gift is given to the incumbent in his official capacity as such, and (*b*) whether it is for the purpose of increasing his stipend. The facts in the case were that the appellant vicar received £56, the result of collections taken in church, or received by him direct from donors, but stimulated by an appeal by the Bishop, who in a diocesan letter urged the "laudable custom" of contributing at this festival to help "the inadequate incomes" of the clergy. Lord LOREBURN, L.C., in his judgment, said at p. 107 that "where a sum of money is given to an incumbent substantially in respect of his services as incumbent it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose (as to provide for a holiday), or a subscription peculiarly due to his personal qualities, it might not have been a voluntary payment for services but a mere present." Lord ROBERTSON, in his judgment, pointed out that the Bishop's letter was "a circular letter, applying not to the appellant alone, but to each and every incumbent in the diocese. Its avowed object was to make up to the clergy the fall in their official incomes. It based the appeal on Christian duty incumbent on the people." Similarly Lord ASHBOURNE: "I cannot doubt that the offerings were given to the vicar as vicar and that they formed part of the profits accruing by reason of his office. The Bishop was naturally anxious to increase the scanty stipends of ill-paid vicars. The whole machinery was ecclesiastical—and I am unable to see room for doubt that they were made for the vicar because he was the vicar, and became within the statute part of the profits which accrued to him by reason of his office."

It is interesting to observe that in the latest and most comprehensive decision of the House of Lords, *Seymour* v. *Reed* [1927] A.C. 554—an appeal in which all previous authorities on the point were reviewed, including *Blakiston* v. *Cooper*—the then Lord Chancellor (Lord CAVE), in allowing the appeal of the person assessed and restoring the judgment given in his favour in the King's Bench but reversed by the Court of Appeal, said this:

"The question to be answered is, as ROWLATT, J., put it: Is it in the end a personal gift, or is it remuneration? If the latter it is subject to the tax; if the former it is not."

That is precisely the basis of the earlier decision, more concisely expressed.

The case of *Seymour* v. *Reed* was a case of a collection made for a professional cricketer, but the whole of the cases cited in the arguments related to sums of money given to ministers of religion. Probably the most interesting (and from the ecclesiastical standpoint certainly the most important) of the judgments given by the five Law Lords present was that of Lord PHILLIMORE, who put an entirely new complexion upon the decision in *Blakiston* v. *Cooper*. He said (at p. 569):—

"The reported cases dealing with a public officer which have been brought to your Lordships' notice are cases concerning ministers of religion. It is suggested that at any rate from these cases it can be deduced that a perquisite or profit of office is none the less a perquisite or profit because the emolument bestowed is voluntary. I doubt whether the analogy can be carried so far. In these religious cases the offering may be voluntary, but it is not spontaneous. In the Easter offering case (*Cooper* v. *Blakiston*) the moral of religious duty to make the offering was inculcated by the Bishop, and, as pointed out in the judgment of your Lordships' House, ecclesiastical machinery was set in motion to procure it.

"Nor does the matter rest there. For a portion of the collection definite legal acts were required to effect the purpose. The collection at the offertory in the Communion Service is provided for by rubric, and by another rubric this offertory is to be disposed of 'to such pious and charitable uses, as the minister and churchwardens shall think fit, wherein if they disagree, it shall be disposed of as the ordinary shall appoint.' Moreover, though the Easter offerings collected on the occasion in question were not the fruits of legal compulsion, they did represent and supersede in respect of some of the contributions a legal due. The rubric preceding the one I have just quoted, says as follows: 'Yearly at Easter every parishioner shall reckon with the parson, vicar or curate, or his or their deputy or deputies; and pay to them or him all ecclesiastical duties, accustomably due, then and at the time to be paid.' Easter offerings or Easter dues are due of common right from every member of his family of sixteen years of age and upwards. True it is that the common law rate is 2d. per head only, though by custom it may be more. It is, I believe, not uncommon, though at the moment I cannot think of an instance, and probably was more common when more offices were paid by fees than are so endowed now, that there should be a legal fee of small amount which it was usual to augment. Such fees of office are intended to be covered by the words of Sched. E as profits or perquisites. Easter offerings along with mortuaries and surplice fees are dealt with as part of the legal income of the clergy by the Tithes Commutation Acts, the first (6 & 7 Will. 4, c. 71, s. 90) providing that a parochial agreement shall not extend to their commutation, while a later Act (2 & 3 Vict., c. 62, s. 9) allows them to be included in a parochial agreement. They are also dealt with in the New Parishes Act (6 & 7 Vict., c. 37, s. 15)."

It is plain, therefore, that the decision of the House of Lords in *Blakiston* v. *Cooper* might have been based on a much wider foundation—legal recognition of the right of an incumbent to the Easter offerings which in their naked form are undoubtedly assessable as part of the income of the benefice. It is also plain that no such considerations could apply to the case of an "assistant stipendiary curate" who is an unbeneficed clergyman, dependent for his status in the parish where he works upon a licence from the Bishop. In the case of Mr. STARKEY his licence (from the Bishop of London)

gave him "licence and authority to perform the office of assistant stipendiary curate . . . in preaching . . . and performing all ecclesiastical duties belonging to the said office in the form prescribed in the Book of Common Prayer and the Canons and Constitutions in that behalf lawfully established and promulgated . . . and we do by these presents assign unto you the yearly stipend of £240 to be paid quarterly for serving the said cure: and we do direct that you reside within the distance of one mile of the said parish."

It was contended for the respondent that the word "office" in the Bishop's licence meant merely "duty" or "status" as in the "offices" of the Book of Common Prayer, and that it did not involve the ordinary legal conception of an office. ROWLATT, J., however, whilst apparently prepared to agree to this, held that the respondent had a "position" which brought him within the Income Tax Acts—or in any event that "he had a profession, the emoluments of which would be none the less taxable because some of the people who contributed to them did so voluntarily." The relative positions of Bishop, incumbent and curate under the licence were argued at some length, it being contended that there was no "employer," but ROWLATT, J., held that in practice the employer was the incumbent of the parish under whom the licensee worked. It was stated, in the course of this argument, that a Bishop, by admitting a man to Holy Orders, made himself personally liable for his maintenance (Canon 33 of 1604) until such time as he could obtain a "title"; and for that reason a Bishop would only ordain such candidates as could show a "title" (e.g., university fellowship) or private means, together with such others as he could see the prospect of providing with an appointment within reasonable time. Hence the growth of the system indicated in the licence, by which, in consideration of being relieved of the responsibility of maintenance, the Bishop would "lend" the assistant priest to an incumbent who was in need of help. ROWLATT, J., agreed that the curate had not an ordinary contract of employment and had, therefore, been held not to be insurable under the National Insurance Acts.

With regard to the question of the general status of unbeneficed clergy, reference was made by counsel for the respondent to a report on that subject (No. 571) presented last year to the Lower House of the Convocation of Canterbury. This report (of which a copy lies before the writer) is of great interest to the student of ecclesiastical law. It sets out in detail the history of the growth of the English parochial system:—

> "Until the Reformation the monasteries played an important part in regulating the supply and demand of parochial clergy, absorbing any surplus and supplying any deficiency. But with their abolition, and the confiscation of their property, a new state of affairs arose. No funds were available for the maintenance of those ordained as 'clergy of the diocese,' though the bishops were legally liable for every candidate accepted, unless he could show a 'title' to a cure of souls. The practice grew up, therefore, of treating the office of an incumbent's priest-assistant (although conferring no ecclesiastical status on its holder) as such a title. These 'curacies' to use the popular though inaccurate term have been multiplied in large numbers during the past century owing to the increase of population without a corresponding sub-division of parishes. Those holding them are, in theory, in the employment of the bishop, and lent by him to overworked incumbents. In practice they are independent priests, working when and where they think fit, and with no responsibilities except such as their individual consciences or needs impose on them."

That seems to confirm the submission made on behalf of the respondent, that there is a complete distinction between the status of an incumbent and the status of the "curate" licensed by the Bishop to assist in the parish. The conclusive fact in this case, however, as ROWLATT, J., pointed out, was that in the parish magazine a notice had appeared inviting donations to the collection to express to the respondent "gratitude for his devoted and earnest ministry." Obviously it could not be contended here that the gift was not remuneration for services, and there can be no doubt that the decision was right.

That, however, is a digression. Coming now to the authorities, we find that the series of cases bearing upon this subject (most, if not all, of which were cited in the course of the argument in the *Starkey Case*) begins with the Scottish case of *Inland Revenue* v. *Strang* (1878), 15 Sc. R. 704. There a clergyman of the Established Church of Scotland received a gift of £100 at Christmas raised by voluntary subscription among his friends, the majority of whom were members of the congregation. He had had a similar gift at the same time for two years previously. It was held, on appeal by the Crown from the Commissioners (who had decided the issue in the respondent's favour), that the sum in question was a payment made to him in respect of his office or employment as a clergyman—that being in the judgment of Lord CURRIEHILL an "office or employment of profit under an ecclesiastical body" within the meaning of the rule. It was unfortunate (this observation has been made subsequently by *obiter dicta*) that on this appeal the respondent was not represented, and therefore only the Crown arguments were before the court—a precedent thus being established which has naturally tended to colour to some extent all subsequent decisions. Contradictory judicial views have been expressed as to the correctness of this decision, Lord PHILLIMORE in particular holding that it was wrongly decided.

The first *English* case in which a gift to a clergyman arose was *Turner* v. *Cuxson* (1888), L.R. 22 Q.B.D. 150. There a curate received a donation of £50 from the council of the Curates' Augmentation Fund. By the rules of that society, such grant was made only to curates of fifteen years' standing and it was given not in return for services to the parish in which a curate was then acting, but as a recognition of his faithful services generally and conditionally upon his raising among friends and giving to the society half the amount, the council being under no obligation to repeat the gift. It was held by Lord COLERIDGE, C.J., and MANISTY, J., that the donation was not assessable to income tax as it was not an "annual profit or gain accruing from profession trade or vocation" within Sched. D of s. 2, Income Tax Act, 1853, nor payable in respect of salary, fees, wages, perquisites or profits accruing from any office or employment held under any ecclesiastical body under Sched. E of Act of 1842. Lord COLERIDGE observed that the amount was "not given for services in the parish at all—not by the persons whom he serves—and not in respect of the particular services he renders—but it is an honorarium paid by the society to a deserving man . . . under conditions. It would be given to him whatever parish he might be in."

In *Herbert* v. *McQuade* [1902] 2 K.B. 631, an incumbent received a grant from the Queen Victoria Clergy Sustentation Fund—the object of which was to increase the income of all poor benefices to a minimum of £200. The grant was stated to be "for the augmentation" of the benefice. Here the Court of Appeal (reversing the judgment of the King's Bench in favour of the incumbent) held that this sum was "profits" and assessable, and distinguished it from *Turner* v. *Cuxson* thus (per COLLINS, M.R.):—

> "This system, under which augmentation of benefices is carried out and the practice which regulates it is clearly distinguishable in fact from the present case. One is a gift—not in the sense of an eleemosynary donation—but an augmentation of a benefice under an organised system for augmenting benefices irrespective of persons. The other a personal eleemosynary gift to a meritorious curate and none the less so because he happened to be the curate of a parish."

The next case, *Turton* v. *Cooper* (1905), 21 T.L.R. 546, was one in which portions of collections taken in church were given to the incumbent, who was a poor man in a very poor living. There CHANNELL, J., cited portions of the judgments in *Herbert* v. *McQuade* and came to the conclusion that the money was given to the incumbent not as an additional remuneration, but because he was a poor man: "They said to the appellant, 'You are a poor person inadequately remunerated, but we should not give it to you it you were rich; but you a poor person, and we give.' He thought that the gift was personal to the appellant and did not accrue to him by virtue of his office as incumbent; and his judgment must be for the appellant."

Within a few days of the judgment in *Turton* v. *Cooper* the Court of Appeal reversed a judgment by PHILLIMORE, J. (as he then was), in *Poynting* v. *Faulkner*, where the minister of a chapel had received a grant of £50 from a fund called the Ministers' Stipend Augmentation Fund. PHILLIMORE, J., had held that the gift had been made for personal considerations—viz., age, lack of means and past services—and therefore was not assessable. The Court of Appeal, however, held that the grant was made by way of augmentation of the stipend of the minister, and not as a personal gift, and that, therefore, the applicant was assessable.

What then shall we say is the conclusion of the whole matter? The decisions are very conflicting, but it would still seem that the test suggested by ROWLATT, J., in *Seymour* v. *Reed*, quoted by CAVE, L.C., with approval in the House of Lords, holds good—is it a personal gift, or is it remuneration? A gift to provide a holiday, or for some other personal benefit without reference to services rendered—a mark of personal regard and appreciation—is clearly not assessable. Congregations wishing to bestow such a gift will no doubt take warning; and it may be perhaps not inappropriate to suggest that their churchwardens should keep an eye upon the editing of the parish magazine!

Summary Justice.

[CONTRIBUTED.]

AT a recent conference of the National Association of Probation Officers the President is reported to have said that in this country the administration of justice was very largely by members of the general public. Justices were laymen, taken from the ordinary public, and he thought that the ignorance of the public was in many cases the ignorance of the justices. It is said, too, that greater care is now taken in the matter of the selection of these justices; inclusion on the Bench is not to be regarded as a reward for political service. It is claimed that progress is thus made in the administration of justice. There are strong grounds, however, for saying that the system of lay justices is bad *ab initio*, and that no amount of amendment can cure a dangerous anachronism which ought to be swept away altogether.

So many are the people interested, so profound is their ignorance of their own and others deficiency, that unless a powerful effort is made by those who really know what justices' justice is, the old wicked system is likely to outlast our time.

The criminal system of this country is in most respects the pride and admiration of those who know it, and one supposes, the envy of less fortunate countries.

It is based on the presumed innocence of the accused and the necessity to prove beyond reasonable doubt every allegation against him. It is administered by experienced and fearless judges who have the confidence of all classes.

Judges of the High Court serve a life experience in the profession of the law, before they come to administer it.

Recorders have by Act of Parliament to be trained professional men.

Chairmen of Quarter Sessions, in fact, though not by law, are almost universally men who have actively practised the criminal law.

These superior courts work under the supervising eye of the Court of Criminal Appeal, where judges in *banc* sit to sift irregularities and errors in the Courts of Assize and Quarter Sessions.

But with summary justice it is otherwise. Appeals may be possible against the decision of justices, but where defendants are poor there is, in fact, an almost unlimited capacity for undetected and unappealed injustice.

In small towns and all country districts justice in the smaller cases is administered by amateurs. Often these are men and women distinguished in other relations of life, earnest, single-minded and complacent. Sometimes they are unapt, always they are untrained, generally they are incapable not only of solving their problems, but even of knowing what the difficulties are.

They are assisted, advised, often managed by a clerk, whose qualification is generally that of a small country solicitor.

Sometimes there is actually corruption in these courts, but innocent bungling is bad enough in matters of people's liberty and reputation.

One would not readily submit one's appendix for removal by the squire of the village, even if he were coached during the operation by the village chemist.

Lightly, however, we submit our names and bodies (or those of our neighbours) to tribunals as unfit to try cases as the squire-cum-chemist is to undertake major operations.

An amateur magistrate, who is a well-read and successful City man, once asked a professional magistrate whether seven or fourteen days' imprisonment would have been better in a case, which he stated, of larceny of a pair of boots.

The answer was that on the facts stated there was no larceny and the prisoner should have been acquitted. The poor wretch was, however, no better lawyer than the magistrate and served seven (or fourteen) days' imprisonment for an offence which was not committed.

The people who are able to form an opinion as to the way in which justice is administered in these courts are few in number. Only those with the necessary knowledge can give an opinion of any value. Justices themselves, as already stated, do not appreciate their own difficulties and shortcomings. Solicitors are in less degree unqualified always to know what is wrong. Too few of the great Lord Chancellors who re-assure the public on the excellence of their appointments to the commission of the peace have ever seen or heard a justice function or ever entered a court of petty sessions. Barristers with knowledge of police court practice in fact are almost the only people who really know, and their knowledge, if their opinion is to be of value, must cover an extensive field. The amateur justice should be known from every angle—on the Bench—and off it, in petty sessions, in Quarter Sessions, in the private room, at lunch and in the club, in the railway train, in juvenile courts, and in the hunting field. After such study—if the study is intelligent—the opinion is at least entitled to respect. The opinion arrived at by one whose experience is of the character indicated and extends over nearly thirty years, is quite definitely that any attempt to put things right by means only of the most careful selection of lay magistrates is doomed to failure.

The only hope is to banish the amateur altogether and select trained professional men for the job. An immense amount of prejudice stands in the way of reform. All influences, including an otherwise excellent departmental one, are brought to bear on the hopeless task of improving the unimprovable.

Even Metropolitan Police magistrates are by Act of Parliament in their juvenile courts joined to two lay colleagues, who could presumably combine together to form a majority.

The remedy is not difficult or expensive. Trained stipendiary magistrates, travelling circuit through a county or counties, with a proper clerk, would have to take the place of the present amateurs. Immense public concern is felt for convicted murderers and poor persons unable to pay for their own defence, and legislation is attempted or threatened in these connexions.

If interest were aroused and a Government with ideas could be induced to take up and prosecute to a fitting end the reform indicated of our system of summary jurisdiction, something really worth while would be achieved.

Company Law and Practice.

LXX.

THE QUALIFICATION OF DIRECTORS—IV.

THE powers of the court to prohibit persons from being directors of companies are not exhausted by s. 217, with which we dealt in this column last week; under that section, such prohibition can ensue only where the official receiver, in a compulsory winding up, has made a further report under s. 182 (2) in which he states that, in his opinion, a fraud has been committed. There is no such condition precedent attached to the exercise of the somewhat similar power of prohibition contained in s. 275.

Before examining the power of prohibition, it is necessary to refer briefly to certain earlier provisions of s. 275. Section 275 (1) provides that, if, in the course of a winding up, it appears that any business of the company has been carried on with intent to defraud creditors of the company or of any other person or for any fraudulent purpose, the court may declare that any of the directors of the company, whether past or present, who were knowingly parties to the carrying on of the business in such manner, shall be personally responsible, without any limitation of liability, for all or any of the company's liabilities as the court may direct. The court has no power to do this of its own motion; it can only be done on the application of the official receiver, or of the liquidator, or of any creditor or contributory of the company. This subsection raises more than one point of difficulty; it is a new provision, introduced by the Act of 1928, and so far there are no reported decisions to afford any guidance; it is not, however, necessary for the present purpose to examine it with the care it needs before a thorough grasp of its difficulties can be obtained, and we will pass on to s. 275 (3). This subsection makes every director knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company or of any other person, or for any fraudulent purpose, liable on conviction on indictment to imprisonment for a term not exceeding one year.

The persons upon whom the court may, under s. 275, impose a ban against being a director, or taking part in the management of a company, are (*a*) persons against whom a declaration of unlimited liability has been made under s. 275 (1), and (*b*) persons who have been convicted under s. 275 (3). The ban is similar to that which may be imposed under s. 217, and which was dealt with in this column last week; but it may be imposed by a different tribunal—either the court making the declaration of unlimited liability, which would be the court engaged in the winding up of the company, or the court before which the person was convicted, which would be a court having criminal jurisdiction. For the purposes of giving leave to act (it will be remembered that the ban is not an absolute one, but only prohibits the person concerned from doing the forbidden acts without the leave of the court) the criminal court has no jurisdiction, however; this jurisdiction, whether the prohibition followed a declaration of unlimited liability, or a conviction, is exercisable by any court having jurisdiction to wind up the company.

A minor point here arises as to whether the expression "court having jurisdiction to wind up the company" means the court having jurisdiction to wind up the company of which the person was a director, and in respect of which directorship the declaration or conviction was made, or the company of which the person proposes to become a director if permitted by the court. The view which the Rule Committee have taken of this is apparent from the terms of Ord. 53B, r. 4 (2), which says that an application for leave under s. 275 (4) must be intituled in the matter of the company whose business was carried on with such intent or for such purpose as mentioned in s. 275 (1), and in the matter of the Companies Act, 1929. In view of the fact that the High Court has now jurisdiction to wind up any company registered in England (s. 163), the point is not one of much importance, but, though the views expressed in the Rules of the Supreme Court are entitled to respect, they do not bind one to a particular construction of the Act, and there is something to be said for the view that the application may be made to any court having jurisdiction to wind up the company of which the applicant is proposing to become a director, if he can get the necessary leave.

In the High Court the application for leave to act must be by summons (Ord. 53B, r. 8 (*k*)); to which, if it be an originating summons, no appearance need be entered by a respondent (Ord. 53B, r. 9). The official receiver, or the liquidator, must appear on the hearing of such an application leave, and may give evidence, or call witnesses (s. 275 (7)). The wording of this sub-section is not at all clear, when it comes to deciding whether the official receiver and the liquidator should, in every case, both be made respondents to a summons for leave to act; or whether one is sufficient. The wise applicant will make both respondents (a case can hardly be conceived where application is made before a liquidator has been appointed), leaving upon them the onus of deciding what their proper course should be. The well-advised liquidator will take counsel with the official receiver before deciding whether to attend the hearing—it seems quite clear that only one of them need attend. In concluding this article, it may be said that s. 275 is a section which seems to be even worse drafted than the majority of the new sections contained in the Companies Act, 1929; there is, perhaps, a crumb of satisfaction to be gathered from the supposition that the section is not likely to be frequently invoked.

(*To be continued.*)

A Conveyancer's Diary.

Right of Personal Representative to Sell Land of which his Testator or Intestate was a Tenant for Life under the S.L.A.

A few weeks ago an eminent conveyancer sent to the Editor of this journal a copy of an article which he had written anonymously in a contemporary and was good enough to say that he would "be flattered if the writer of 'A Conveyancer's Diary' were some day to give his readers his views on the subject."

I have not hitherto had an opportunity of complying with the request so courteously made, and although I suspect the learned writer (in quite a friendly way, of course) of laying a trap for me and shall probably appear like an unwary fly responding to a proverbial invitation, I propose to do my best to grapple with the subject.

It will be observed from the heading to this "Diary," that the subject is by no means a new one. In fact, it has been discussed again and again, but I do not think that any satisfactory answer has yet been made to the question which was ultimately propounded in very precise language by my learned friend.

In the article to which I have referred the learned writer deals with the rights and powers of a personal representative of a tenant for life with regard to the sale of the land of which the deceased was a tenant for life. He advanced some interesting arguments and made at least one very ingenious suggestion, of which I shall say more anon. In response to some correspondence, or perhaps to some articles in reply (I do not know which), the learned writer suggested that the purport of his article might be stated in the following proposition :—

"Can a general personal representative of a tenant for life of land which was settled, as a matter of course, and notwithstanding that he may be an entire stranger, sell such land ? If so, under what statute or statutes, section or sections, can this be done ? This is a plain question and what is wanted is a plain answer to it."

I do not wish to anticipate matters, but I may say at once, in reply to those of my readers who may, perhaps, think "surely that was settled by *Re Bridgett and Hayes Contract*," that it certainly was not ; and to those who have been led to conclude that a general personal representative of a tenant for life has in relation to the land of which his testator or intestate was tenant for life, the same powers as he has in relation to the property to which the testator or intestate was beneficially entitled, I say that that is a misleading proposition ; and to those who may contend that it does not matter because, in any case, a purchaser from the personal representative gets a good title, I say that, even if that should be so (which is, of course, in question), it does matter to the personal representative even if it should not to a purchaser from him.

The question must be looked at from the point of view of the personal representative as well as that of a purchaser. The solicitor advising him must find an answer to it. And (although, again, not wishing to anticipate) I cannot find any answer in the argument (if it can be called such) so often advanced and reiterated from time to time by some writers, that it is "convenient" that a legal personal representative should have the right suggested. All things which are "convenient" are not right nor are they, necessarily, expedient.

At the risk of being tedious, I think that I must shortly refer the reader to the statutory provisions under which settled land devolves on the death of a tenant for life upon his personal representative. If I am to deal in any comprehensive way with this subject that is necessary, and although to most of my readers it needs no exposition, it obviously still does to some, judging from letters which I have received directly or which have been passed on to me by the Editor.

By s. 1 (1) of the A.E.A., 1925, it is enacted :—

"Real estate to which a deceased person was entitled for an interest not ceasing on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person."

Now, in the case of settled land the legal estate in fee simple or for a term of years absolute vests in the tenant for life who has therefore two estates, the legal estate in fee simple or for a term of years absolute, which is not an estate ceasing on his death, and an equitable estate for life, which does cease on his death. The legal estate therefore passes to his personal representative. This is made quite clear by s. 3, which reads :—

"(1) In this Part of this Act 'real estate' includes—

"(i) Chattels real and land in possession remainder or reversion and every interest in or over land to which a deceased person was entitled at the time of his death ; and

"(ii) Real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.

Consequently the legal estate in settled land, whether leasehold or freehold, passes to the personal representative of the tenant for life on his death.

In passing I must refer to s. 22 of the A.E.A., 1925, which deals with the appointment of special executors in regard to settled land. It is not really germane to the matter under consideration, because the question propounded is only concerned with the powers of personal representatives under what we have become accustomed to call "general grants." It is sufficient to say that in consequence of the dictum of Romer, J., in the *Bridgett and Hayes Contract*, the provisions of the section whereby special grants may be made to the trustees of the settlement on the death of a tenant for life apply only when the land remains settled land after that event or rather (as I think it should be stated) when after the death of the tenant for life the land devolves in equity upon another tenant for life or statutory owner.

I need not dwell upon that. For the present purposes we are assuming a case where no grant under s. 22 of the A.E.A. can be, or at any rate has been made—where, as it is generally put, "the settlement comes to an end," on the death of the tenant for life.

Having cleared the way so far, we return to our original question. What right has the personal representative of the tenant for life under a general grant to sell the *quondam* settled land, and if it exist, by what enactment is it conferred ?

I hope to consider this further next week.

Landlord and Tenant Notebook.

Criminal Offences.

Of the indictable offences known to the law of Landlord and Tenant, those dealt with by the Statutes of Forcible Entry (as they are commonly, though not officially, known) are perhaps the most important. The importance may, in these law-abiding days, be considered to be largely historical ; but that the statutes supplied a want is demonstrated by the fact that there are five of them, passed in 1381, 1391, 1429, 1588 and 1623 respectively. The first prohibits forcible entry, which was already a crime at common law : *R.* v. *Blake* (1765), 3 Burr. 1731 ; the second provided machinery for dealing with the offence : the justices were to apprehend the offenders, and were to be assisted, if necessary, by all and sundry. We use the past tense because the procedure may be deemed obsolete ; in 1842 mandamus was refused against a justice who had refused to respond because it had never been done in his county : *Ex p. Davy*, 2 Dowl. N.S. 24. The statute of 1429 created the offence of forcible detainer and provided for the annulment of conveyances to third parties on conviction of the offender. The statute has been held only to apply in the case of an entry originally unlawful : *R.* v. *Oakley* (1832), 4 B. & Ad. 307. The 1588 Act applied to forcible entry the period of limitation, as regards restitution, stipulated for in a proviso to the previous statute ; three years' possession deprived the convicting court of the right to make an order. The 1623 statute enabled a court to make restitution to a leaseholder forcibly ejected. The question of what constitutes "forcibly" was considered in *R.* v. *Blake, supra* : actual force such as would imply a breach of the peace is necessary. The penal consequences of breaking the peace by forcible entry do not in any way affect a landlord's right to occupy when the crime has been committed, as to which see *Jones* v. *Foley* [1891] 1 Q.B. 730, and *Hemmings* v. *Stoke Poges Golf Club, Ltd.* [1920] 1 K.B. 720, C.A.

The Malicious Damage Act, 1861, s. 13, makes it a misdemeanour for a tenant unlawfully and maliciously to pull down or demolish the premises or to sever a fixture. Probably the section would apply in the case of setting fire to the

premises (in *R.* v. *Christian* (1842), 12 L.J.M.C. 26, under another Act, it was held that one could " demolish " by fire), though there would be nothing to prevent the tenant from being proceeded against for arson. The section specifically includes tenants at will and ex-tenants holding over.

The Larceny Act, 1916, also contains a section dealing specially with tenants; s. 16, which relates to theft by a tenant of chattels or fixtures let with the premises. The latter would not be larcenable at common law. The maximum penalty of seven years' penal servitude when the value of the property exceeds £5 is more severe than that provided for simple larceny, but less than the maximum sentence for the crime of larceny in a dwelling-house.

On being charged with a second offence under the Criminal Law Amendment Act, 1885, s. 13, the defendant may elect to be indicted. The section deals with the letting of premises as brothels and for purposes of prostitution, and both landlords and tenants are within its purview, the former being liable for letting with the knowledge of the intended use or wilfully being parties to such continued use, the latter for knowingly permitting the use. The question whether a tenant holding a long lease of premises consisting of a shop and accommodation above could be guilty if he sub-let the upper part as two separate flats which were used by the sub-tenants for prostitution was recently decided in *Siviour* v. *Napolitano* (1931), W.N. 24; it was held that the tenant could not be prosecuted as a tenant.

Among the non-indictable offences, those relating to infected premises are the most serious. The Public Health Act, 1875, s. 128, imposes a maximum penalty of £20 on anyone letting premises in which any person has been suffering from a dangerous infectious disorder and who does not disinfect the premises and articles liable to retain infection; and he must do so to the satisfaction of a medical practitioner, testified by a certificate. The next section makes it an offence to give a false answer to anyone negotiating for a tenancy who inquires as to sufferers from infectious illnesses having been on the premises within the preceding six weeks. Similar provisions are contained in the Public Health (London) Act, 1891, ss. 63 and 64. The (adoptive) Infectious Disease (Prevention) Act, 1890, s. 7, gives the occupier of premises in which, within six weeks of his ceasing to occupy them a person has suffered from infectious disease, an option: he must either disinfect and obtain a certificate, or inform the owner. False answers to owner or intending occupier are also punishable.

Among the lesser offences—one might call them the 40s. class—are those now dealt with by the Statement of Rates Act: s. 3 so deals with the offence of making a written demand for rent, or issuing a receipt, in contravention of the Act. A similar provision in the Increase of Rent, &c., Act, 1920, s. 11, may sometimes help to enforce a request to state the standard rent; but the maximum penalty for profiteering in furnished lettings (s. 10) is £100. Under the Housing Act, 1925, s. 5, failure to inform working-class tenants of the name and address of the local medical officer is punishable with a fine of 40s.; but for re-letting a house ordered to be closed, a fine of £20 may be imposed on the first conviction, and of £5 per day if the letting continues after the conviction.

CITY OF LONDON BILL.

The City of London (Various Powers) Bill was considered recently by the Unopposed Bills Committee of the House of Commons. The Bill authorises the City Corporation to set up a new superannuation fund, and the Committee was informed that officers of the Central Criminal Court would become eligible for superannuation. The Lord Chancellor interested himself on their behalf, and it was at his instance that they were brought into the fund. The Home Office approved their inclusion.

By another part of the Bill the Corporation is empowered to regulate shop signs and to make bye-laws limiting the number of signs that may be placed on any one building.

The Bill was ordered to be reported to the House for third reading.

Our County Court Letter.

SITES IN AMUSEMENT PARKS.

The mutual rights of landlords and tenants with regard to the above were recently considered at Spilsby County Court in *Carter* v. *Butlin*, in which the claim was for £100, as damages for breach of contract. The plaintiff was a palmist, and in 1929 was tenant of a site on the Skegness parade, which he gave up in exchange for £75 and two sites " in prominent positions " in the defendant's amusement parks at Skegness and at Mablethorpe. The latter had never been opened (except for a certain part used as a menagerie), and the plaintiff was not permitted to occupy the agreed site at Skegness, though he was given a temporary site. This was away from the main entrance, however, and the plaintiff could not clear his expenses, so he left at the end of a fortnight. The measure of damages was based on the fact that in July and August the palmists at Skegness earned £100 in 1928 and £140 in 1929, but the defendant's evidence was that the plaintiff's site was as good as any other, and the stall-holder opposite had had a successful season. His Honour Judge Langman held that the site was not " prominent " as agreed, as it was not near the main entrance. The plaintiff, however, instead of giving up, should have earned as much as possible, and then claimed damages for the deficit, if any. Judgment was therefore given for £20 and costs.

The converse of the above, viz., a claim by the landlord for rent, was considered in *Smallwood* v. *Sheppards* [1895] 2 Q.B. 627, in which the plaintiff had agreed to let some waste ground for roundabouts and swings on Easter Monday, Whit-Monday and August Bank Holiday for £45, payable by instalments of £15 each. The defendant occupied the ground at Easter and paid £15, but did not again enter and disputed liability for the balance of rent, as (1) the contract related to an interest in land; (2) in the absence of part performance, the Statute of Frauds required a memorandum in writing. The county court judge held that—(1) There was one entire contract for £45, and (2) there had been a user of the land, and a part payment, which was only referable to one and not to three agreements. The statute had therefore been complied with and the plaintiff was entitled to judgment—a decision which was upheld in the Divisional Court. Mr. Justice Wright pointed out that, in an action for use and occupation, it is sufficient if there had once been an entry, so that actual occupation is not necessary, provided the defendant might have continued to occupy if he had chosen. Although the period of letting was not continuous, the plaintiff's right to the balance (after the termination of the period) was not affected by the fact of the agreement being by parol, as the defence of the Statute of Frauds failed upon the facts. Mr. Justice Kennedy (as he then was) concurred, in dismissing the appeal.

The right of distress was held to be inapplicable to such lettings in *Rendell* v. *Roman and another* (1893), 9 T.L.R. 192. The plaintiff had let a showcase on hire to a stall-holder at a Wild West Exhibition, upon a site of which the defendants were concessionaires from Buffalo Bill. The stall-holder fell into arrears with his rent, and the defendants distrained upon the showcase hired from the plaintiff. The latter claimed £7 10s. (its value), and disputed the right to distrain, as (1) the terms of letting excluded the stall-holder before 10 a.m. and after 11 p.m.; (2) the possession being qualified and limited, the letting was not a lease or tenancy, but a mere licence. The county court judge upheld this contention, but the defendants appealed on the ground that they had granted a lease for a week, at a rent of 30s., and so on from week to week. In the Divisional Court, Lord Coleridge, L.C.J., pointed out that, as the tenant was not entitled to possession at all times, he had a mere licence, which conferred no right of distress. Mr. Justice Cave agreed, as the defendants had retained the right to enter the stall, and the judgment for the plaintiff was therefore upheld.

Practice Notes.

RESTRICTIVE COVENANTS.

It is now the custom in many conveyances when a vendor imposes restrictive covenants upon a purchaser to add a proviso that, "the purchaser shall not be personally liable in respect of any breach of the covenants arising after he shall have parted with all his interest in the land hereby conveyed."

This proviso seems to have certain dangers. Supposing A sells land to B and imposes restrictive covenants on B, but with the above proviso. A registers the covenants against B as the estate owner affected. B then sells the land to C subject to the covenants, but does not re-register the covenants against C. If C then sells to D it seems possible that D may take the land free from the covenants. D's search against C will reveal no subsisting entries. D will therefore apparently be freed from the covenants by virtue of s. 13 (2) of the Land Charges Act, 1925, which reads as follows: "A land charge of class B, class C or class D created or arising after the commencement of this Act shall (except as hereinafter provided) be *void* as against a purchaser of the land charged therewith or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase."

This must be read in conjunction with s. 10 (2) of the same Act, which enacts that "a land charge shall be registered in the name of the estate owner whose estate is intended to be affected." The estate owner at the time of D's purchase was C, and there was no land charge registered against him. If C is the estate owner referred to in the Act, then D is clearly not bound by the covenants.

It is, of course, perfectly arguable that B was the estate owner at the time of the imposition of the covenants and that registration against him will be sufficient for all time; but this view is quite doubtful. From a common-sense point of view such a position would become absurd in the course of fifty years, as it would involve searches against all intermediate estate owners. It would be especially awkward if the thirty years' root of title arose subsequently to the first registration of the covenants.

It has also been suggested that the doctrine of *Le Neve* v. *Le Neve* (1747), Ambl. 436, will still be binding and that a purchaser with actual notice will be bound by a restrictive covenant even though such covenant is not registered. This view seems untenable in the light of the strong wording of s. 13 (2) of the Land Charges Act, 1925, and s. 199 (1) (i) of the Law of Property Act, 1925. *Le Neve* v. *Le Neve* was decided at a time when it was suggested that the common law and equity were superior to statute law and when common law and equitable principles certainly had a great power to modify statutes. However, *re Monolithic Building Co. Ltd.; Tacon* v. *The Company* [1915] 1 Ch. 643, makes it certain that the equitable doctrine of notice cannot overrule a modern statute.

If therefore A and his other successors in title cannot sue D the covenant has become totally unenforceable. A cannot sue B and B cannot sue C because B and C have no longer any interest in the land. Nor can C sue D, even though D has covenanted with C to observe and perform the covenants, for it has been laid down in *Reckitt* v. *Cody* [1920] 2 Ch. 452, that such a covenant is only valid so far as is necessary to indemnify C.

In view of the doubtful state of the law it would seem advisable to compel a purchaser to re-register on every subsequent conveyance. The proviso in question should therefore read, "provided that the purchaser shall not be liable for any breach of the covenants arising after he shall have parted with all his interest in the land so long as he has registered the covenants against any purchaser from himself, and has imposed a covenant similar to this covenant upon each such purchaser or purchasers." Such a covenant would be of some protection to A and his successors in title, though there are certain deficiencies even here.

It is a pity that land charges are not registered against the land instead of against the estate owner.

Reviews.

The Law of Auctions, Estate Agency, Valuation and Commission. By Heber Hart, K.C., LL.D. Third Edition. London: Stevens & Sons, Ltd. 15s.

This third edition of a work already known as a standard treatise on the subject contains more than 200 new references to reported cases. Among the decisions of special interest are *McManus* v. *Fortescue*, where the auctioneer knocked down a lot for a sum less than the reserve figure; *Benton* v. *Campbell Parker & Co.*, which dealt with the position of an auctioneer who sells a chattel for an undisclosed vendor not entitled to dispose of it; and many others of like interest. The Auctions (Bidding Agreements) Act, 1927, is the only new statute that has been passed directly affecting the subject of the work; that statute the learned author passes in review, expressing quite plainly a doubt as to whether it is likely to effect any substantial improvement in regard to the mischief of "knock-outs." The table of cases covered by the present volume must embody every reported case of any importance; the notes appear to have been very carefully revised in connexion with the case law; and the selection of statute law in the Appendix is at once brief and sufficient. We think the new edition will be widely welcomed as authoritative and fully up to date.

The Law of Housing. By S. Pascoe Hayward, of the Middle Temple, Barrister-at-Law. London: Estates Gazette, Ltd. 18s. 6d.

This volume described as a Complete Commentary on the Housing Acts has the merit of being very comprehensive inasmuch as, in addition to setting out the statute law with annotations, it embodies all the important statutory rules and orders, with model bye-laws, memoranda of the Minister and forms, thereby making up a work of reference likely to be of very great service to estate agents and others who require a means of ready access to the law on this subject. The book is arranged in convenient form under the various headings which arise—e.g., the law relating to insanitary areas, provisions as to acquisition of land, etc., etc. It does not profess to be a book embodying all the case law on housing, but rather a compact compendium from which the reader can speedily get on the track of the legal position in regard to any point calling for investigation. In the multiplicity of books now appearing on housing law it is difficult to apportion values in order of merit; but the volume before us may very well be accorded a high place.

Books Received.

Debentures of Private Companies. Herbert W. Jordan, Company Registration Agent. Thirteenth Edition. Large crown 8vo. pp. viii and (with Index) 66. 1931. London: Jordan & Sons, Ltd. 2s. 6d.

Anglic. A New Agreed Simplified English Spelling. By R. C. Zachrisson, Professor of English in the Royal University of Uppsala, etc. Final Revised Edition. 1930. Medium 8vo. 40 pp. Uppsala; Almgvist & Wiksells Boktryckeri, A.B.

Copyright Cases, 1928 30. E. J. Macgillivray, LL.B. (Cantab.), Barrister-at-Law. Demy 8vo. pp. xvi and 242. The Publishers' Association, Stationers Hall Court, London.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Right to Reside on Payment of Nominal Rent—

SETTLEMENT—LIFE INTEREST.

Q. 2176. A, by his will, gave and bequeathed unto his son A "the freehold house situate in and being No. (as stated in the will and being the deceased's address) and the whole of the furniture and effects therein. This house is not to be sold, but my wife may reside in same on payment of a nominal rent to my son, not less than six pounds per annum to be used for repairs to the property in question." The above is an extract from the will of A. The wife is now claiming to be entitled to a vesting instrument as tenant for life. On the death of A his son, who was the executor of the will, informed the wife that she could remain in possession of the premises until she had time to make any necessary arrangements, but within two weeks she left the premises and handed over the keys to A's son, with the verbal intimation that she did not wish to reside in the house. A's son has since let the house on lease, such lease being completed two months after the death of A. Is A's widow a life tenant and entitled to a vesting instrument in her favour, or is she entitled to the benefit of the lease above mentioned ?

A. For the purposes of this reply we assume that, subject to the widow's rights, A's son takes the house absolutely in fee simple, and that the gift and bequest to him thereof and of the furniture, etc., therein was not made to him in his fiduciary capacity. We express the opinion, though not without difficulty, that the widow is not a life tenant or entitled to the benefit of the lease. The son took absolutely subject to the obligation of granting a tenancy at a nominal rent to the widow. The widow by parol and by conduct disclaimed her right. Disclaimer may be by conduct or parol (*Stacey* v. *Elph* (1833), 1 My. & K. 195 ; *Re Clout and Frewer* [1924] 2 Ch. 230).

Proof of Title to Realty under Will.

Q. 2177. The statutory tenant of a dwelling-house within the Rent Acts died in May last, leaving a will which has not been proved. A sister of the statutory tenant who resided with him has since his death remained in possession of the premises and ejectment proceedings have been brought against her, it being contended that she is a trespasser by virtue of the decision of *John Lovibond & Sons* v. *Vincent*, 98 L.J. 402, as the deceased statutory tenant left a will whereby he appointed the said sister sole executrix and universal legatee and devisee. The will has not been proved as there are practically no assets, and the sole point now at issue is as to whether the judge can admit the will of the statutory tenant as evidence that he died testate, no grant of probate having been obtained. We should be glad if you would quote any authorities in support of the admission of the will as evidence of testacy, otherwise it appears to us that the sister could remain on in possession of the premises indefinitely by refusing to take out a grant of probate. Section 12 (*g*) of the 1920 Act, defining "tenant," and dealing with the case of a tenant dying *intestate*, would clearly seem to have no application, provided the will can be admitted as evidence, unproved either with or without an affidavit of due execution by one of the attesting witnesses. The unproved will was produced to the court by the defendant and is now in the hands of the registrar. We act for the landlord, the plaintiff in the action, and judgment has been reserved for a consideration of the above question.

A. In Roscoe's "Nisi Prius Evidence," the editor (p. 144 of 18th Edition), after stating that at common law in order to prove a devise of lands, the will itself must be produced, refers to the Land Transfer Act, 1897, and lays it down that "in such a case" (i.e., a will of freeholds of a person dying after 31st December, 1897) "the probate, etc., will be the only evidence admissible to prove the will." This, however, if entirely correct, does not touch the proof of the *existence of* a will, and this can be proved (in the absence of a grant of administration) by producing one of the witnesses to swear to the due execution of the will as in an action for proof in solemn form (see *Belbin* v. *Skeats*, 27 L.J. Prob. 56). "Primary evidence means the document itself produced for the inspection of the court accompanied by the production of an attesting witness in cases where an attesting witness must be called under articles 66 and 67," i.e., in case of a document required by law to be attested. Stephens "Digest of the Law of Evidence," Art. 64. Further, a party to legal proceedings may, by admission, bind himself as to the existence of a document, and it is conceived that the fact that the document is a will makes no difference. See "Title Admissions," Roscoe.

Grazing Rights over Golf Course.

Q. 2178. (*a*) Can you inform us of a precedent for a lease of grazing rights on a golf course? Such a letting must be very common nowadays, but we are unable to find anything useful in our precedent books.

(*b*) Would such a lease be a "holding" as contemplated by the Agricultural Holdings Act, 1923, so as to confer upon the tenant rights of compensation for disturbance or otherwise?

(*c*) Does the answer to (*b*) depend upon (1) length of letting, (2) whether there are any obligations to be performed by the tenant, such as repairing fences ?

A. (*a*) "The Conveyancer," Vol. 10, p. 351, contains a form of precedent (No. 94) which can be adapted to the special requirements of a golf course by substituting the "club" for "the landlord" and "links" for "fields" throughout, and by deleting the words "cattle and horses" in cl. 1, 1. 2. The following should be added to cl. 8 : "and not to admit the animals of any other person firm or company to the said links either by way of agistment or otherwise." The following fresh clause should be substituted for cl. 9 : "9. That the Club its members visitors employees and other persons authorised by the Club shall have ingress and egress to the said links at all hours and upon all days of the week for the purpose of playing golf or utilising other amenities of the Club and for inspecting and repairing the said hedges fences and gates and also the greens bunkers and fairways of the said golf course and for cutting timber and for sporting and preserving game." The following additional clause should be inserted : "13. That no liability shall be incurred by the Club its members visitors employees or other persons authorised by the Club for any damage or injury caused to the tenant's animals (*a*) by being struck by or swallowing golf balls or (*b*) by fright or premature parturition through being driven out of the way of golfers or their caddies."

(*b*) No, provided the letting is for less than a yearly tenancy. See footnote (*a*) on p. 351, *supra*.

(*c*) (1) Yes, (2) No.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 30th March, 1486, died Thomas Bourchier, Archbishop of Canterbury, formerly Lord Chancellor. He held the Great Seal amid the shifting fortunes of the Wars of the Roses and though appointed by the Lancastrian faction, he did not refuse to retain office after the battle of St. Albans had put the Yorkists into power. It is not surprising, therefore, that shortly after the Red Rose regained the ascendency, the Great Seal was taken from him.

The Archbishop left his mark on the age in that he was instrumental in setting up the first printing press in Oxford about 1464.

MAKING THINGS HOT.

Recently, Mr. Justice Horridge recalled how one of his learned predecessors preserved the highest possible temperature in his court by getting a policeman to sit on the ventilator.

Certainly, judges as a class are not remarkable for their love of fresh air. Hawkins, J., used to say that he preferred suffocation to chill, because it was a slower death ; he took elaborate precautions against draughts. Baron Huddlestone had similar tastes in the matter of temperatures.

By contrast, Wills, J., preferred free ventilation and Maule, J., made history in the Oakham Assize Court one torrid summer's day by ordering the javelin men to smash the windows, which, he had been informed, were not made to open.

THE CHANCELLOR'S COACH.

A newspaper recently reprinted from an 1831 issue a curious report of how Lord Brougham, L.C., having driven through the Horse Guards contrary to a royal regulation on his way to a Drawing Room at the Palace, had to defend his conduct in the Lords. He explained that he had been stopped by the guard and would have turned back but that his coachman, under a misapprehension, drove on. He added that it was odd that the Speaker of the House of Commons was allowed to pass (as was the case) but not the Speaker of the House of Lords.

It is amusing to find one of the most unconventional Chancellors of fairly modern times accused of forcing the King's Guard in his coach. Probably his even more unconventional predecessor, Lord Thurlow, L.C., would have had yet more to say by way of criticism on such an occasion. Certain it is that once when he was obstructed by a carter while driving in state to the House of Lords, he "swore by God that if he had been in his private coach, he would have got out and beaten the damned rascal to a jelly."

THE UNKNOWN HAND.

It is a strange coincidence that Rouse's condemnation should be so speedily followed in Germany by the death-sentence on Kurt Tetzner for a similar crime. In the latter case, there was no puzzle as to motive. The aim was clearly to defraud an insurance company.

Such frauds are often attempted by fantastic methods. Witness the strange case of Arthur Howard in New Zealand, about 1885-6. He vanished while bathing in the sea, and his clothes were found on the shore. The three companies with which his life was heavily insured proved sceptical and refused to pay, offering a reward for certain proof of his death. Shortly afterwards, a stranger elaborately disguised in blue goggles and a wig appeared near the spot where the clothes had been found and pointed out to a fishing party a hand lying on the beach. On a finger was the missing man's ring. The stranger, having persuaded the others to take the responsibility of the discovery, was seen no more. Though Howard's wife professed to recognise her husband's hand, the theory that he had been caught by a shark proved unsatisfactory. In the end, he was traced, tried and convicted.

But part of the problem has never been solved. Where did the severed hand come from ? Seven bodies were exhumed in the district to which the man was ultimately tracked, but all were intact. That hand preserved in spirits in Christchurch always remained a mystery.

Correspondence.

Speed Limit in Royal Parks.

Sir,—I see in your last issue, on page 179, the view is expressed that the speed limit is still in force in the Royal parks. I venture to question these conclusions.

The Motor Car Act of 1903 imposes a speed limit of 20 miles an hour for a motor car on a public highway. A highway is defined as including a roadway to which the public is granted access, and it has been held as including even a private road, such as those leading to railway stations, on which the public are permitted to pass.

It has been the practice, until 1st January, 1931, to prosecute offenders against the speed limit in the parks under the Motor Car Act, 1903. The Parks Regulations, imposing a limit of 20 miles an hour, did not come into operation until 23rd December, 1927.

The Road Traffic Act of 1930 states quite clearly, though in a roundabout way, that there is no limit of speed for a person while driving an ordinary passenger motor car on a road. "Road" in this Act is defined as being "any highway and any other road to which the public has access." The two Acts, therefore, use practically identical words—the old Act applies to "a road to which the public are granted access," the present Act to "any road to which the public has access," and no hair-splitting can draw any distinction between the two definitions.

The courts, in what must have been thousands of cases, have had no difficulty in the past in applying the old Act to the parks, and such decisions could only stand on the assumption that a road in the park was one to which "the public are granted access."

The hundreds of prosecutions that have already been instituted since the beginning of this year now demonstrate a complete *volte face*, and the Parks Regulations as to the speed limit are now brought into force, as the original weapon of prosecution has been taken away by Parliament. The police have to change their ground entirely, and, in order to support these prosecutions, have to say that a road which has for a quarter of a century been held to be one to which the public has access is now one to which the public has not access.

If this contention is right, as a matter of justice, is the Home Secretary prepared to recommend the refunding of the thousands of fines that have been imposed in past years upon park offenders who have been victims of a mistaken interpretation of the law ?

London, W.C.2. HAROLD BEVIR.
17th March.

[This is a matter about which there is room for two opinions ; but we adhere to our own, in spite of our correspondent's very clear argument to the contrary.

We think that before the coming into force of the Road Traffic Act it was lawful to prosecute for excessive speed in the Royal parks under (*a*) the Motor Car Act, or (*b*) the Parks Regulations ; now (*a*) is no longer available, but (*b*) remains. The validity of prosecutions under the Parks Regulations, it seems to us, is untouched by the question whether the Motor Car Act was rightly or wrongly applied to speed limit cases in the Royal parks.—YOUR CONTRIBUTOR.]

WILL SIGNED AT TOP.

A will signed by the testatrix at the top of the sheet because there was not room for her signature at the bottom, was upheld by Mr. Justice Finlay at Liverpool Assizes.

Legal Parables.

THE OLD LADY AND THE MAJESTY OF THE LAW.

Once there was an old lady who had exceedingly proper opinions on all subjects. She cherished the highest possible reverence for the law of England. She thought the judges looked so noble in their tremendous wigs and scarlet robes; she thought that even the barristers looked like old family portraits; moreover, she often said she envied men who dedicated their lives to defending the children of the poor and punishing wrongdoers. Above all, she admired the perfect propriety of all the proceedings in English courts of law, so unlike the rowdy foreign courts that she read about in the papers.

As, however, she had never actually been inside a court of justice, she determined to find means to visit one. Therefore, one day while the assizes were being held in the town near which she resided, she made a suitable offering in the proper quarter and was admitted to the court, where she was accommodated with a prominent and comfortable seat.

A female prisoner occupied the dock on a capital charge, and the old lady paid wrapt attention to all that occurred. It was clear from the first that the accused hadn't much of a chance, and the jury did not take long to find their verdict. When the foreman pronounced the word "guilty," the old lady could hardly contain her emotions. In consequence, she didn't quite catch what the prisoner said next, and before she realised what had happened she found herself herded into a group of middle-aged matrons who were informed that they would have to verify an assertion of a very delicate nature which the prisoner had just made.

The old lady was so overcome with confusion that she quite forgot to tell the court that she was a spinster.

All the rest of her life she was never tired of repeating that the administration of criminal justice was a very sordid thing.

Moral: Don't try to catch a rainbow.

Obituary.

Mr. GILBERT ROBERTSON.

Mr. Gilbert Robertson, solicitor, senior member of the firm of Gilbert, Robertson & Co., Post Office Chambers, Bute Docks, Cardiff, died on the 23rd ult., at the age of fifty-six. Mr. Robertson, who was admitted in 1898, practised alone for some years, but was joined in partnership by Mr. A. C. Hooper, (as Gilbert Robertson & Co.) and later by Mr. J. Owen Davies. He was a Notary Public.

Mr. W. W. BRODIE.

Mr. Walter William Brodie, solicitor, a member of the firm of Brodie & Walton, of Llanelly, died in London on the 20th ult., at the age of sixty-eight. Admitted in 1885, Mr. Brodie was Under-Sheriff of the County of Carmarthen, Clerk to the Llanelly Bench of Magistrates, and Coroner for the Llanelly district. In 1927 he was President of the West Wales Law Society.

Mr. G. F. HAWKINS.

Mr. Geoffrey Grahame Hawkins, solicitor, formerly a member of the firm of Grahames & Co., Millbank House, Westminster, died at Le Touquet on the 25th ult., aged seventy.

Mr. F. PERRIN.

The death took place on Monday, the 16th inst., at New Basford, Nottingham, of Mr. Fred Perrin, solicitor, who had been in practice in Nottingham for about twenty years. He retired from practice on account of failing health in the early part of last year.

Mr. W. D. BECKTON.

The death occurred early on the morning of Wednesday, the 18th inst., at the Manor House, Titherington, at the age of sixty-five, of Mr. Walter Dorning Beckton, a member of the firm of Hockin, Beckton & Hockin, solicitors, Manchester. Admitted in 1889, his membership of the firm dates from that time. He was a well-known philatelist and held the important office of President of the Royal Philatelical Society for just over twelve months at the date of his death, quite recently receiving the Lindenberg Medal, the highest philatelic honour in Germany, awarded for conspicuous services to philately. He possessed a large and valuable private collection of stamps.

Mr. J. J. SPENCER.

Mr. John James Spencer, solicitor, head of the firm of J. J. Spencer & Son, Nottingham, died early on the morning of Thursday, the 19th inst., at his residence, The Manor House, Ockbrook, near Derby, at the age of seventy-one. He was articled to the late Mr. Harry Wyles and subsequently joined him in partnership under the firm name of Wyles & Spencer, but the partnership was dissolved in 1896. His only son, Mr. John Spencer, joined him in partnership after the expiration of his articles. He was President of the Nottingham Law Society in 1911. He was a member of the Hollinwell, Rushcliffe, Seacroft and Radcliffe Golf Clubs and was on the House Committee of the Notts Golf Club.

Mr. H. W. BROWN.

Mr. Herbert William Brown, B.A. (Oxon), solicitor, of Tewkesbury, died there on Saturday, the 14th inst., after an illness which lasted several months, at the age of fifty-seven. Admitted in 1898, he was the senior member of the firm of H. W. Brown & Co., and held the appointments of Registrar and High Bailiff of the Tewkesbury County Court and Clerk of the Peace for the borough.

Mr. JOHN DRUITT.

Mr. John Druitt, Solicitor, Christchurch (Hants), died there recently. Admitted in 1887, he was a member of the firm of Druitt & Sons, of Bournemouth and Christchurch, was clerk to the Justices and had been for thirty years Town Clerk of Christchurch, retiring in 1925. He was also Clerk to the Burial Board Joint Committee.

Notes of Cases.

House of Lords.

Tolley *v.* J. S. Fry & Sons, Limited. 23rd March.

Libel—Caricature—Limerick—Trade Advertisement—Defamatory Words—Innuendo—Excessive Damages.

This was an appeal by Mr. Cyril Tolley, the amateur golfer, from an order of the Court of Appeal. The defendants published a caricature of the plaintiff which represented him in golfing costume, with a packet of the defendants' chocolate protruding from his pocket, and below the caricature was a limerick in the following terms:—

"The caddie to Tolley said, 'Oh, sir,'
Good shot, Sir, That ball, see it go, Sir,
My word how it flies
Like a cartel of Fry's
They're handy, they're good and priced low, Sir."

The plaintiff thereupon brought this action. He did not complain of the caricature or the words as being defamatory in themselves, but he denied the innuendo that he had permitted his portrait to be exhibited for gain and had been guilty of conduct unworthy of his status as an amateur golfer. The jury found a verdict for the plaintiff for £1,000 damages. The Court of Appeal held that the damages were excessive,

and that there ought to be a new trial on that ground, and the majority of the Court further held that there was no case to leave to the jury. From that decision the present appeal was brought.

Lord HAILSHAM, in delivering judgment, said that both sides agreed that the summing up was not open to criticism and the finding in favour of the plaintiff ought not to be disturbed. As to the damages there had been no appeal of the Court of Appeal that they were excessive, and that a new trial was necessary. Whether or not the new trial should be limited to damages or should extend to a retrial of the whole case was a matter of discretion. The amount of the damages was not so excessive as to warrant the inference that the jury took a biassed view of the whole case. The imputation against the plaintiff was an offensive one, and was given the widest publicity, and when the defendants were given an opportunity to apologise they did not do so. He thought the case was one for substantial damages. He accepted the decision that £1,000 was too much, but in his opinion the new trial should be limited to the assessment of damages, and he moved their lordships accordingly.

Lords DUNEDIN, BUCKMASTER and TOMLIN gave judgment to the same effect, and Lord BLANESBURGH differed.

COUNSEL: *R. Goddard*, K.C., *H. M. Giveen* and *Lawson Campbell*; *Norman Birkett*, K.C. and *H. Monckton*, K.C.

SOLICITORS: *Cohen & Cohen*; *Pritchard, Englefield & Co.*, for *Osborne, Ward, Vassall, Abbott & Co.*, Bristol.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Wilkes *v.* Allington.

Lord Tomlin, sitting as additional Judge of Chancery Division. 4th March.

Donatio mortis causa—DELIVERY OF MORTGAGE DEED—INCURABLE DISEASE OF DONOR—DEATH FROM ANOTHER CAUSE—INTENTION OF DONOR.

In this witness action the plaintiffs, who were the executors of the will of W. D. Allington, claimed a declaration that a certain mortgage was a subsisting security and to have it delivered up to them and to be enforced by forfeiture or sale. The defendants contended that W. D. Allington had made a valid *donatio mortis causa* of the mortgage by delivering it to two of the defendants. The defendants were the four children of J. Allington (a brother of W. D. Allington), who died in 1922, having by will given his farm to his widow, A. Allington, during her life, and after her death to his four children in equal shares. In 1923 A. Allington mortgaged the farm to W. D. Allington, and shortly afterwards died. On 11th December, 1927, W. D. Allington, being then very ill, gave to his nieces an envelope on which was written "Deeds relating to Astwood Farm to be given up on death," saying "I have brought this down for you, put it away." The envelope contained the mortgage of 1923. The donor died on 23rd January, 1928.

Lord TOMLIN, after referring to *Cain* v. *Moon* [1896] 2 Q.B. 283, said it was clear that there was a good delivery of the mortgage, and that it was made in contemplation though not in immediate expectation of death. But it was argued that there was no indication that the testator intended that, if he survived, the property was to revert to him, which was the third essential condition of a valid *donatio mortis causa*. In the present case the distinction was a very fine one, because W. D. Allington was, as he well knew, smitten with a disease which must before long terminate fatally, though, in fact, he did not die from it. The fair inference from the facts proved was that he had changed his mind since he had written the original indorsement on the envelope, and although at one time he did not intend to give anything until after his death he did resolve on 11th December to release and return the mortgage in the event of his death. There was, therefore, a valid *donatio mortis causa*. The statement that the gift was conditional on the deceased dying from his existing disorder was unsupported by any authority, the contrary view being supported in *In re Richards* [1921] 1 Ch. 413. The action would be dismissed with costs.

COUNSEL: *Sir G. Hurst*, K.C., and *L. Tillard*; *Jenkins*, K.C., and *Greenland*.

SOLICITORS: *Peacock & Goddard*, for W. A. Parry, Worcester; *Church, Rendell, Bird & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Parliamentary News.

House of Commons.

Questions to Ministers.

MURDER CASES (APPEALS).

Mr. MANDER asked the Attorney-General if he will consider the possibility of introducing legislation to render possible an appeal in murder cases on grounds of wrongful admission of evidence at any stage of the proceedings.

Mr. PALING (Lord of the Treasury): No, Sir. There is no intention of introducing legislation to extend the grounds of appeal in Section 3 of the Criminal Appeal Act, 1907. [19th March.

WILLS (PROBATE COPIES).

In reply to Mr. BEAUMONT, Mr. PETHICK-LAWRENCE stated that the cost of the installation of the photostatic process for probate copies of wills was £936 10s. [19th March.

APPEALS AGAINST CONVICTIONS (SURETIES).

In reply to Mr. HACKING, Mr. CLYNES stated that while the Government have much sympathy with the suggestion that it should no longer be necessary for a person, wishing to appeal against a conviction, to lodge £40 or obtain two sureties for that amount, the question raises very difficult issues, and would require the most careful consideration before legislation could be proposed. In view of the state of public business, I regret that I cannot see my way to introduce legislation to deal with this matter. [19th March.

HOUSING (RURAL WORKERS) ACT.

In reply to Sir A. STEEL-MAITLAND, Miss LAWRENCE stated: My right hon. Friend regrets that he cannot yet specify a date for the introduction of a Bill to extend the operation of the Housing (Rural Workers) Act, but it will not be long delayed. [23rd March.

INCOME TAX (ASSESSMENT APPEALS).

In reply to Mr. C. WILLIAMS, Mr. PETHICK-LAWRENCE said: No applications have yet been made for the reduction of assessments of annual values which are now being made for the purposes of assessment to Income Tax Schedule A for 1931-32 as the notices of these assessments have not yet been issued. [24th March.

The Solicitors' Law Stationery Society, Limited.

The Solicitors' Law Stationery Society, Limited, report that sales for the year 1930 were increased by £5,011, and the profit by £2,061 to £53,529. The amount brought forward, after adjustment owing to the increase in the rate of income tax, was £9,341, and this, with the profit for the year, gives an available balance of £62,870. The Directors recommend that a dividend of 12 per cent. be paid for the year, being the same as that for 1929.

As the dividend exceeds 3 per cent., a bonus is distributable under the Articles of Association amongst solicitors whose accounts with the Society during the year exceeded £50. A bonus is also payable to the staff under the profit-sharing scheme.

The dividend and bonuses absorb the sum of £47,820, and £5,000, as in the previous year, is to be added to reserve, leaving £10,050 to be carried forward.

The annual meeting will be held at 102/7 Fetter Lane, E.C.4, on Tuesday, the 31st March, at 12 noon.

Legal Notes and News.

Honours and Appointments.

The Chancellor of the Duchy of Lancaster has appointed His Honour Judge PROCTER to be one of the Judges of the County Courts on Circuit No. 6 (Liverpool, etc.) in succession to His Honour Judge A. Patten Thomas, who has retired.

Judge Procter has been Judge of Circuit 19 (Derby, Chesterfield, Burton-on-Trent, etc.), since 1928. He was born in 1871, and was called to the Bar at Gray's Inn in 1905, practising on the Northern Circuit.

Mr. GUY T. EAGLETON, solicitor, has been appointed Clerk to the Haberdashers Company in succession to his father, Mr. John Eagleton, who has retired.

Mr. ARTHUR M. OLIVER, O.B.E., M.A., Town Clerk of Newcastle-on-Tyne, has been re-appointed Clerk of the Peace for that City and County in succession to the late Mr. E. H. Motum. Mr. Oliver was admitted in 1896.

The Secretary of State for Scotland has appointed Mr. JAMES MUNRO MATHESON to be Sheriff-Clerk of Buteshire in the room of Mr. T. W. Alexander, deceased.

ILLNESS OF JUDGES.

Lord Russell of Killowen, Lord of Appeal-in-Ordinary, has temporarily taken the place of Lord Tomlin, also a Law Lord, as an additional Judge of the Chancery Division, which is still without the services of Mr. Justice Eve and Mr. Justice Clauson. Both Lord Tomlin and Lord Russell of Killowen were formerly Chancery judges.

Lord Darling is continuing his assistance in the King's Bench Division.

THE LORD MAYOR AND THE TEMPLE.

Proposing the civic toast at a ladies' banquet of the Paviors' Company at Carpenters' Hall on Monday last, Lord Justice Slesser said that though the Lord Mayor entertained the members of the Inner Temple twice a year they never entertained him, as he has always insisted on coming with his Sword-bearer.

The Inner Temple, he said, had made it a rule that it would never submit to the jurisdiction of the Lord Mayor. If his Lordship would come without his Sword-bearer and just as a simple citizen he would be gladly welcomed.

NON-APPEARANCE OF COUNSEL.

The civil business at the recent Notts Assizes was held up through the non-appearance of counsel and witnesses for the plaintiff in one case and counsel in another. Mr. Justice Talbot was told that it had not been easy to find what was in his list, whereupon he said: "It is most unfortunate and most reprehensible. Someone is to blame. I have never known this difficulty to happen before." He added: "Some sort of paralysis seems to have settled over this city."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE MAUGHAM. Non-Witness
M'nd'y Mar. 30	Mr. More	Mr. Jolly	Mr.*More	Mr. Andrews
Tuesday .. 31	Ritchie	Hicks Beach	Hicks Beach	More
Wed. April. 1	Andrews	Blaker	*Andrews	Hicks Beach
Thursday . 2	Jolly	More	More	Andrews

	GROUP I. MR. JUSTICE BENNETT. Witness. Part II.	MR. JUSTICE CLAUSON. Non-Witness.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
M'nd'y Mar. 30	Mr.*Hicks Beach	Mr. Blaker	Mr.*Ritchie	Mr. Jolly
Tuesday .. 31	*Andrews	Jolly	*Blaker	*Ritchie
Wed. April. 1	*More	Ritchie	*Jolly	Blaker
Thursday . 2	Hicks Beach	Blaker	Ritchie	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION will commence on Friday, the 3rd day of April, 1931, and terminate on Tuesday, the 7th day of April, 1931, inclusive.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 9th April, 1931.

	Middle Price 25 Mar. 1931.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	89½	4 9 5	—
Consols 2½%	56½	4 8 6	—
War Loan 5% 1929-47	104	4 16 2	—
War Loan 4½% 1925-45	101	4 9 1	4 8 0
Funding 4% Loan 1960-90	93	4 6 0	4 6 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	95	4 4 3	4 5 3
Conversion 5% Loan 1944-64	106	4 14 4	4 13 0
Conversion 4½% Loan 1940-44	101	4 9 1	4 8 0
Conversion 3½% Loan 1961	78½	4 9 2	—
Local Loans 3% Stock 1912 or after	66	4 10 11	—
Bank Stock	263½xd	4 11 0	—
India 4½% 1950-55	82½	5 9 1	5 17 0
India 3½%	58½	5 19 8	—
India 3%	50½	5 18 10	—
Sudan 4½% 1939-73	99	4 10 11	4 11 0
Sudan 4% 1974	90	4 8 11	4 11 6
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	86½	3 9 4	3 18 0
Colonial Securities.			
Canada 3% 1938	91	3 5 11	4 8 6
Cape of Good Hope 4% 1916-36	95xd	4 4 3	5 1 0
Cape of Good Hope 3½% 1929-49	84	4 3 4	4 16 6
Ceylon 5% 1960-70	102	4 18 0	4 17 6
*Commonwealth of Australia 5% 1945-75	70	7 2 10	7 4 9
Gold Coast 4½% 1956	99	4 10 11	4 11 4
Jamaica 4½% 1941-71	97	4 12 9	4 13 3
Natal 4% 1937	95	4 4 3	4 19 0
*New South Wales 4½% 1935-1945	61	7 7 7	9 2 7
*New South Wales 5% 1945-65	63	7 18 8	8 7 4
New Zealand 4½% 1945	93½	4 16 3	5 3 3
New Zealand 5% 1946	99½	5 0 6	5 1 0
Nigeria 5% 1950-60	103	4 17 1	4 16 0
*Queensland 5% 1940-60	67	7 9 4	7 17 0
South Africa 5% 1945-75	102	4 18 0	4 17 9
*South Australia 5% 1945-75	65	7 13 10	8 4 8
*Tasmania 5% 1945-75	73	6 17 0	7 8 0
*Victoria 5% 1945-75	65	7 13 10	8 6 8
*West Australia 5% 1945-75	65	7 13 10	8 6 8
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	66	4 10 11	—
Birmingham 5% 1946-56	103	4 17 1	4 16 0
Cardiff 5% 1945-65	101	4 19 0	4 18 9
Croydon 3% 1940-60	75	4 0 0	4 11 0
Hastings 5% 1947-67	102	4 18 0	4 17 6
Hull 3½% 1925-55	82	4 5 4	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	76	4 12 1	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	57	4 7 9	—
London City 3% Consolidated Stock after 1920 at option of Corporation	66	4 10 11	—
Metropolitan Water Board 3% "A" 1963-2003	66	4 9 7	—
Do. do. 3% "B" 1934-2003	67	4 9 7	—
Middlesex C.C. 3½% 1927-47	86	4 1 5	4 14 6
Newcastle 3½% Irredeemable	76	4 12 1	—
Nottingham 3% Irredeemable	66	4 10 11	—
Stockton 5% 1946-66	103	4 17 1	4 16 6
Wolverhampton 5% 1946-56	103xd	4 17 1	4 14 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	83½	4 15 10	—
Gt. Western Railway 5% Rent Charge	100½	4 19 6	—
Gt. Western Rly. 5% Preference	90½	5 10 6	—
L. & N.E. Rly. 4% Debenture	75	5 6 8	—
L. & N.E. Rly. 4% 1st Guaranteed	69½	5 15 2	—
L. & N.E. Rly. 4% 1st Preference	49½xd	8 1 8	—
L. Mid. & Scot. Rly. 4% Debenture	76½	5 14 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	71	5 12 8	—
L. Mid. & Scot. Rly. 4% Preference	49½	8 1 8	—
Southern Railway 4% Debenture	79½	5 0 8	—
Southern Railway 5% Guaranteed	98½	5 1 6	—
Southern Railway 5% Preference	86½	5 15 7	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

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SOLICITOR, general practice and clerk to local authority in growing South Coast town, has vacancy for articled clerk. Public school man preferred. Good prospects for suitable man used to country life.—Box No. 87, Solicitors' Journal, 29, Breams-bldgs., E.C.4

PRACTICES AND PARTNERSHIPS.

SOLICITOR (25), June Final, 1930, seeks Junior Partnership in conveyancing and general practice; experienced in Conveyancing, Probate and family business, and able to work without supervision; would undertake advocacy; capital available.—Box 694, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (31), formerly a member of the Bar, desires to purchase partnership in well-established firm in London or Southern Counties; thorough general experience in London and provinces; capital available.—Box 686, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SMALL General Practice with possibilities (within 30 miles of Manchester) for sale; reasonable offer accepted as immediate sale essential.—Apply Box 638, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SMALL Practice, with possibilities (in Wales), for sale, owing to advanced age.—Apply Box 665, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, practising own account, desires to purchase established progressive Conveyancing and General Practice producing average net profit £1,000 per annum in London.—Box 124, Solicitors' Journal, 29 Breams-buildings, E.C.4.

EXPERIENCED Solicitor required as Partner, in consequence of death of Junior Partner, in old-established Family Conveyancing and General Practice, with County connections. Excellent prospects for suitable gentleman. Audited Accounts.—State age, experience and capital available, Box 657, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR desires to purchase old-established general and conveyancing practice in or near London showing substantial profits; or early succession.—Box 99, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (35), M.A., Oxon, Commissioner for Oaths, desires partnership in old-established Conveyancing and General Country Practice; preferably in Chester or neighbouring counties. Wide experience in conveyancing, trust and family business and general practice. Able to introduce business; necessary capital available.—Box 246, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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FOR SALE.—"The Solicitors' Journal," Vols. 68 to 73, unbound. What offers?—Box 650, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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ANY person having any information as to any ESTATE OR SUMS of MONEY due to the deceased JOHN ARTHUR RUSSELL, formerly in the employment of Messrs. Pauling and Company, Limited, 26, Victoria-street, Westminster, S.W.1, as railway constructional engineer at Lobito Bay, Portuguese West Africa, or in regard to any Will or Settlement left by him, is requested to COMMUNICATE with the Subscribers within 14 days.—Tindal, Oatts and Rodger, Solicitors, 113, St. Vincent-street, Glasgow, Agents for the deceased's representatives.

MISS JANE EDITH FLOCKHART, deceased. INFORMATION WANTED as to the HEIR AND NEXT OF KIN of Miss JANE EDITH FLOCKHART, of Gairney House, York-road, Edinburgh, and Annacroich, Kinross, who died on 24th November, 1930. She was the daughter of William Flockhart, of Annacroich (died 1871), and grand-daughter of William Flockhart, of Annacroich (died 1819), and great grand-daughter of Henry Flockhart, of Annacroich (died 1795 or 1796). Information as to descendants or collaterals of her great-grandfather is desired by the Subscribers, Agents for her Trustees and for the Judicial Factor on her heritable estate.—ROBSON, McLEAN & PATERSON, 25, Queen-street, Edinburgh.

EDWARD GEORGE WOOD, deceased.—Will any person having the custody, or any knowledge, of a WILL made by this deceased, lately residing at Edwards' Hotel, Euston-square, N.W.1, please COMMUNICATE with Messrs. Ernest Winterbotham & Co., 1, Frederick's Place, Old Jewry, E.C.2.

CHARLES FREDERICK BALLS, deceased, of The Fountain Hotel, Garrett-lane, Tooting, Surrey.—Will any person having or knowing of a WILL of the deceased please COMMUNICATE with Messrs. Hunters, Solicitors, 9, New-square, Lincoln's Inn, W.C.2.

GRIMSDALE.—The Kin of MARY GRIMSDALE, Widow, late of 284, Kingsland-road, Shoreditch, Middlesex, who died at Shoreditch on 26th May, 1930, are requested to APPLY to the Treasury Solicitor (B.V.), Storey's Gate, London, S.W.1. (Estate about £600.)

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Printed by THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., at "Oyez" House, Fetter Lane, London, E.C.4, and Published at 29, Breams Buildings, E.C.4 ('Phone: Holborn 1853). Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide Street West, Toronto 2, Canada; India: Higginbothams, Publishers Mount Road, Madras; Australia and New Zealand: "The Times," 255a, George Street, Sydney, N.S.W. Saturday, March 28th, 1931.